

No. 26-4137

In the United States Court of Appeals
FOR THE NINTH CIRCUIT

PETER STAVRIANOUDAKIS, ET AL.,

Plaintiffs-Appellants,

v.

U.S. DEPARTMENT OF FISH & WILDLIFE, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of California
No. 1:18-cv-01505-JLT-FJS
Honorable Jennifer L. Thurston

Appellants' Opening Brief

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Table of Contents

Table of Authorities.....	iv
Introduction.....	1
Jurisdictional Statement	2
Issues Presented	2
Background	4
A. Licensed falconers must submit to warrantless searches of their property, under pain of losing their licenses.	4
B. This Court’s 2024 decision recognized that licensed falconers suffer injuries under the unconstitutional-conditions doctrine..	5
C. CDFW changed the license certification but left the challenged authority causing the alleged injury intact.	5
D. The district court dismissed the case as moot based on the edited certification, not the actual source of the injuries.	7
Standards of Review.....	8
Argument.....	9
I. The district court erred because the Falconers’ injury is the forced choice, not what is written on a piece of paper.	12
A. Deleting the recital of the search authority from the certification has no effect on the on-going injury.	12
B. This Court already recognized Falconers’ on-going unconstitutional conditions injuries in 2024.	19

II.	Falconers’ claims are live because the challenged power causing the injury never ceased being exercised.....	22
III.	Falconers’ claims are live because the license must be renewed each year, thereby triggering the “capable of repetition, yet evading review” doctrine.	25
IV.	Falconers’ claims are live because effective equitable relief remains available to end their injuries.	26
	Conclusion	28
	Certificate of Compliance	29
	Certificate of Service	30

Table of Authorities

Cases

<i>Already, LLC v. Nike, Inc.</i> , 568 U.S. 85 (2013).....	11, 24, 25
<i>Anobile v. Pelligrino</i> , 303 F.3d 107 (2d Cir. 2002).....	21
<i>Armour Packing Co. v. United States</i> , 209 U.S. 56 (1908)	18
<i>Bd. of Cnty. Comm'rs, Wabaunsee Cnty. v. Umbehr</i> , 518 U.S. 668 (1996)	15
<i>Bd. of Trs. of the Glazing Health & Welfare Tr. v. Chambers</i> , 941 F.3d 1195 (9th Cir. 2019).....	24
<i>Dolan v. City of Tigard</i> , 512 U.S. 374 (1994).....	16
<i>Farley Terminal Co. v. Atchison, Topeka & Santa Fe Ry. Co.</i> , 522 F.2d 1095 (9th Cir. 1975).....	18, 20
<i>Fed. Crop Ins. Corp. v. Merrill</i> , 332 U.S. 380 (1947)	18, 20
<i>Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.</i> , 528 U.S. 167 (2000)	9, 27
<i>Frost & Frost Trucking Co. v. Railroad Commission of California</i> , 271 U.S. 583 (1926)	13, 14
<i>Keyishian v. Bd. of Regents</i> , 385 U.S. 589 (1967)	15
<i>Koontz v. St. Johns River Water Mgmt. Dist.</i> , 570 U.S. 595 (2013)	passim
<i>Lowry v. Barnhart</i> , 329 F.3d 1019, 1024 (9th Cir. 2003)	6
<i>Lyons v. City of Los Angeles</i> , 615 F.2d 1243 (9th Cir. 1980)	22
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025)	16, 17
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026).....	17
<i>Nollan v. Cal. Coastal Comm'n</i> , 483 U.S. 825 (1987).....	15
<i>Perry v. Sindermann</i> , 408 U.S. 593 (1972)	15
<i>Protectmarriage.com-Yes on 8 v. Bowen</i> , 752 F.3d 827 (9th Cir. 2014)	25, 26
<i>Serpas v. Schmidt</i> , 827 F.2d 23, 29–30 (7th Cir. 1987).....	21

<i>Sherbert v. Verner</i> , 374 U.S. 398 (1963).....	14
<i>Stavrianoudakis v. U.S. Fish & Wildlife Service</i> , 108 F.4th 1128 (9th Cir. 2024)	passim
<i>Thomas v. Review Bd. of Ind. Employment Sec. Div.</i> , 450 U.S. 707 (1981)	14
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 582 U.S. 449 (2017)	14, 15
<i>Weinstein v. Bradford</i> , 423 U.S. 147 (1975).....	25

Statutes

28 U.S.C. § 1291	2
28 U.S.C. § 1331	2
42 U.S.C. § 1983	2

Other Authorities

Committee Staff Summary for January 15, 2025	6, 24
Title 14 Fish and Game Commission Notice of Proposed Changes in Regulations.....	7

Rules

Fed. R. App. P. 4(a).....	2
---------------------------	---

Regulations

14 CCR § 670(j)(3)(A)	passim
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Introduction

In ruling on Appellants American Falconry Conservancy, Peter Stavrianoudakis, and Eric Ariyoshi's (Falconers) appeal, this Court is presented with two primary questions that encompass the issues presented:

1. Under the doctrine of unconstitutional conditions, the injury is the forced choice, not the paperwork. Appellee California Department of Fish and Wildlife (CDFW) deleted language from falconry license certifications describing its warrantless-search power. Nothing else changed. Falconers still need CDFW-issued licenses, and those licenses make them subject to 14 CCR § 670(j)(3)(A)'s warrantless-search provision. If they refuse this condition, they lose their license. Are Falconers subject to an unconstitutional condition?
2. A claim is not moot where the challenged authority has never ceased being exercised. In response to this litigation, CDFW deleted language from falconry license certifications describing its warrantless-search power. But the power

being challenged under 14 CCR § 670(j)(3)(A)—the right to condition licenses on a waiver of Fourth Amendment rights—and the source of Falconers’ injuries, remains intact and enforced. Are Falconers’ claims still live and capable of redress?

Jurisdictional Statement

The district court had subject matter jurisdiction under 28 U.S.C. § 1331 because Appellants’ claims arise under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction under 28 U.S.C. § 1291. On April 27, 2026, the district court granted Appellees’ motion to dismiss as moot and entered final judgment disposing of all claims as to all parties (ECF No. 161). Appellants timely filed a notice of appeal on June 29, 2026. Fed. R. App. P. 4(a).

Issues Presented

1. Whether the unconstitutional conditions injury this Court recognized in *Stavrianoudakis v. U.S. Fish & Wildlife Service*, 108 F.4th 1128, 1138–41 (9th Cir. 2024), survives CDFW’s deletion of a recitation of its warrantless search power from the

license certification, where the coercive condition itself remains on the books under 14 CCR § 670(j)(3)(A).

2. Whether the Falconers' challenge to 14 CCR § 670(j)(3)(A) is still live when CDFW only changed the words on a license certification but kept intact the authority challenged: the power to condition falconry licenses on prior "consent" to warrantless searches of homes and property on pain on license revocation?
3. Whether the "capable of repetition, yet evading review" exception applies when a falconry license renews annually, imposing the same coerced choice on the same licensees each year so that no single year's controversy can be litigated to judgment before it expires.
4. Whether effective relief remains available—a declaratory judgment that the condition contained in 14 CCR § 670(j)(3)(A) is unconstitutional and an injunction against enforcement—so that the claims are neither moot nor beyond redress.

Background

A. Licensed falconers must submit to warrantless searches of their property, under pain of losing their licenses.

California requires a state-issued license to practice falconry, administered by CDFW. ER-25. Holding a falconry license makes one subject to 14 CCR § 670(j)(3)(A), which authorizes CDFW to conduct unannounced warrantless “facility” inspections. Falconers allege these “facility inspections” are actually warrantless searches of their homes and other property protected by the Fourth Amendment. ER-24–25.

Further, 14 CCR § 670(j)(3)(A) provides that CDFW “may deny the issuance of, or immediately suspend, the license of a licensee who refuses to be available to participate in a facility inspection or who refuses to allow inspection of a facility, license, book, or other record.” This provision was in force when Falconers’ licenses were issued and remains in force today. ER-19, 29–33.

At the time this action was filed, the falconry-license application also required each applicant to sign an annual certification agreeing, among other things, to “abide by[] all conditions of this license,” and containing language by which the applicant acknowledged that the licensee was

subject to unannounced warrantless searches of their property pursuant to subsection 670(j). ER-4.

B. This Court’s 2024 decision recognized that licensed falconers suffer injuries under the unconstitutional-conditions doctrine.

Falconers challenged California’s licensing scheme as imposing an unconstitutional condition: the surrender of Fourth Amendment rights against warrantless searches of their property as a condition of obtaining and retaining a falconry license. *Id.* at 25, 38. In this Court previous consideration of this case, it agreed with Falconers.

This Court held that Falconers suffered a cognizable, recurring injury from the forced choice between “retention of their Fourth Amendment rights or receipt of a falconry license,” an injury they “suffer ... every time they renew their licenses.” *Stavrianoudakis*, 108 F.4th at 1138. The Court *separately* held that appellants lacked standing to challenge the warrantless searches absent an actual or imminent search. *Id.* at 1141–43. The case was remanded. *Id.* at 1144.

C. CDFW changed the license certification but left the challenged authority causing the alleged injury intact.

On remand, and per the district court, CDFW initiated litigation-driven rulemaking to amend the falconry license certification. ER-4

(citing ER-51–66). Specifically, the district court found that after “the Ninth Circuit issued its mandate [] CDFW initiated a series of steps to amend the certification challenged by Plaintiffs.” *Id.* (internal citation removed). Additionally, CDFW’s own rulemaking record confirms the deletions to the falconry certification were litigation-driven.¹

A CDFW document presenting the rule change proposal states that CDFW proposed the falconry changes in response to litigation and, among other things, to “[d]elete a provision in subsection 670(e)(2)(D)” disfavored by the Ninth Circuit. Committee Staff Summary for January 15, 2025.² This Court’s previous 2024 opinion was included as an attachment to the Summary. *Id.*

Further, the Policy Statement Overview for the proposed change to the falconry certification states that the purpose of the action was

¹ This Court may supplement the record on appeal where there were inadvertent omissions from the record, or where the Court’s inherent equitable authority to supplement the record is appropriate. *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) (citing Fed. R. App. P. 10(e)(2)(C)). Both are present here. Current counsel for Falconers were not part of the proceedings below, including what would be included in the opposition briefing. The statements of CDFW staff now provided have direct relevance to the documents the district court relied upon, and Falconers’ arguments opposing mootness.

² https://libertyjusticecenter.org/wp-content/uploads/SS_0115_Item-4_Falconry.pdf

“conforming certain provisions of the Falconry regulations with recent court orders,” and specifically to “[c]onform the regulations and the initial and renewal Falconry license applications with the recent opinion issued by the 9th Circuit ... concerning the ‘certification.’” Title 14 Fish and Game Commission Notice of Proposed Changes in Regulations, at 1 (Mar. 19, 2025).³

Through the rulemaking described above, effective January 1, 2026, CDFW deleted a requirement that the licensee certify acknowledgment that their property is subject to unannounced warrantless searches pursuant to 14 CCR § 670(j)(3)(A). ER-4. However, the changes to the certification had no effect on the regulatory authority to conduct warrantless searches or to suspend a license for refusing compliance with a search pursuant to 14 CCR § 670(j)(3)(A), because the operative regulation remained unchanged. *Id.* at 49–64.

D. The district court dismissed the case as moot based on the edited certification, not the actual source of the injuries.

On April 27, 2026, the district court granted CDFW’s motion to

³ https://libertyjusticecenter.org/wp-content/uploads/670-Falconry-2025-Notice-of-change-in-regs_041525.pdf

dismiss, holding that CDFW's deletion of the recital of its warrantless search authority from the certification mooted Falconers' unconstitutional-conditions claim. ER-5–6.

Specifically, the court reasoned that 14 CCR § 670(j)(3)(A) was merely “discretionary permission for the government to conduct unannounced inspections at some unspecified time in the future.” *Id.* at 6. Additionally, the court determined that “conditions of this license” no longer textually incorporated 14 CCR § 670(j)(3)(A) and that no effective relief remained available in light of this Court's 2024 holding on Falconers' standing regarding actual warrantless searches. *Id.* at 6, 8.

The district court also held that the voluntary-cessation exception to mootness did not apply because the change to the falconry certification was effected through formal rulemaking entitled to a presumption of good faith. *Id.* at 6–8.

This timely appeal followed. *Id.* at 67–69.

Standards of Review

This Court reviews de novo a dismissal for mootness and for lack of standing. *Stavrianoudakis*, 108 F.4th at 1136. On a facial challenge to jurisdiction, all material allegations of the complaint are accepted as

true and construed in the light most favorable to the plaintiff. *Id.* The party asserting mootness bears a heavy burden of persuading the court that “the challenged conduct cannot reasonably be expected to start up again.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (quotation marks omitted).

Argument

This appeal turns on a single premise the district court got wrong: that CDFW could extinguish a constitutional injury by editing a form.

It cannot. In 2024, this Court held that Falconers suffered a cognizable, recurring injury from being forced to choose between “retention of their Fourth Amendment rights or receipt of a falconry license,” an injury they “suffer ... every time they renew their licenses.” *Stavrianoudakis*, 108 F.4th at 1138. That injury flows from the unconstitutional-conditions doctrine, which forbids the government from “coercively withholding benefits from those who exercise” a constitutional right—“regardless of whether the government ultimately succeeds in pressuring someone into forfeiting” it. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606 (2013). The injury is the forced choice, not the paperwork describing it.

In response to this litigation, CDFW changed the falconry certification, and its own rulemaking record stated the purpose was to “conform” the regulations and application to this Court’s 2024 opinion. *Supra* at n.2–3. But CDFW left untouched the operative source of the coercion: 14 CCR § 670(j)(3)(A), which conditions receipt and retention of a falconry license on “agreeing” to allow warrantless inspections of their home and property. The regulation specifically authorizes the immediate suspension of any licensee “who refuses to be available to participate in a facility inspection or who refuses to allow inspection.” 14 CCR § 670(j)(3)(A). That penalty conditions continued licensure on *advanced submission* to unannounced warrantless searches of Falconers’ homes and property, by force of law, at every renewal.

When Falconers annually renew their licenses, they suffer an unconstitutional condition: not because they sign a form, but because the license makes them subject to the condition contained in 14 CCR § 670(j)(3)(A). CDFW could delete the entire falconry license certification and the forced choice this Court held cognizable in 2024 would still exist. CDFW changed the paperwork, not the law. The district court’s contrary findings cannot stand.

First, the district court located the alleged unconstitutional-conditions injury in the deleted certification language rather than in the licensing condition that remains in force in 14 CCR § 670(j)(3)(A)—an error that misapprehends the unconstitutional-conditions doctrine.

Second, the district court found the case moot without recognizing that the challenged authority never ceased. A defendant cannot moot a case by ending a documentary description of power it continues to exercise, and CDFW’s own rulemaking record confirms the changes to the certification were litigation driven and left 14 CCR § 670(j)(3)(A) intact. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013).

Third, the district court declined to apply the “capable of repetition, yet evading review” exception by recharacterizing the annual renewal cycle as one-time voluntary cessation.

Fourth, the district court held no relief was available by conflating this Court’s 2024 holding regarding Falconers’ lack of standing to challenge unannounced warrantless searches with the distinct relief available on the unconstitutional-conditions claim—a declaratory judgment and an injunction against the conditioning penalty, either of which redresses the coerced choice.

Reviewed de novo, each of the district court's conclusions was error.

The order of dismissal should be reversed and the case remanded.

I. The district court erred because the Falconers' injury is the forced choice, not what is written on a piece of paper.

A. Deleting the recital of the search authority from the certification has no effect on the on-going injury.

The unconstitutional-conditions doctrine does not require a signed waiver, an executed form, or any particular paperwork. Instead, it targets the government's act of coercively conditioning a benefit on the surrender of a constitutional right. *Koontz*, 570 U.S. at 606 (“[T]he unconstitutional-conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them.”).

The fact that the Court has never required a written waiver or acknowledgment for an unconstitutional conditions injury to occur is present across the spectrum of unconstitutional-conditions cases—including speech, religion, property, and education—and has been the rule for nearly a century.

Consider the doctrine’s foundational case. In *Frost & Frost Trucking Co. v. Railroad Commission of California*, 271 U.S. 583 (1926), California ordered a private trucking company to stop using California highways unless it obtained a certificate of public convenience and necessity. *Id.* at 589–90. The Court found that California’s order violated the Due Process Clause of the Fourteenth Amendment by conditioning a private carrier’s use of state highways on the carrier’s accepting the duties and burdens of a common carrier. *Id.* at 592. A state “may not impose conditions which require the relinquishment of constitutional rights.” *Id.* at 594.

Frost involved no written waiver, no release, and no executed instrument of any kind. The unconstitutional-conditions analysis turned on the coercive nature of the condition, not the mechanism or form through which the government imposed it. *See id.* at 593. In the words of the Court, surrender of a right that is voluntary in form but compelled by the government is merely a “choice between the rock and the whirlpool.” *Id.*

The same is true in the context of free exercise cases in which coercive unconstitutional conditions are imposed by statute and

administrative fiat, not paperwork. *See Sherbert v. Verner*, 374 U.S. 398, 404–05 (1963) (the liberties of religion may not be infringed “by the denial of or placing of conditions upon a benefit or privilege.”) (collecting cases); *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 717–18 (1981) (“Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith ... a burden upon religion exists,” even though “the compulsion may be indirect”).

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), Missouri’s Department of Natural Resources had “a strict and express policy of denying grants to any applicant owned or controlled by a church, sect, or other religious entity.” *Id.* at 455. A religious school filed a grant application for state funds to improve its playground and was denied. *Id.* at 454–56. In holding “[t]he Department’s *policy* violate[d] the Free Exercise Clause,” the Court paid no consideration to the grant application process. *Id.* at 466 (emphasis added). Instead, the forced choice between a public benefit and exercise of a constitutional right was the source of the harm. *Id.*

The same principle applies in the context of free speech cases, in which claims of unconstitutional conditions turn on the presence of

government coercion, not formal applications or paperwork. *See, e.g., Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967) (teaching position conditioned upon non-membership in subversive organizations); *Perry v. Sindermann*, 408 U.S. 593 (1972) (teaching position conditioned upon not criticizing college administration). The injuries in these cases turned on government coercion, not “formal distinctions, which can be manipulated largely at the will of the government agencies concerned.” *Bd. of Cnty. Comm’rs, Wabaunsee Cnty. v. Umbehr*, 518 U.S. 668, 679 (1996) (cleaned up).

This also tracks with the Court’s Fifth Amendment takings cases. In those cases, courts examine whether there is an “essential nexus” between the government condition on a land use permit and the government interest at stake. *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 837 (1987). Next, courts determine whether the government condition on the permit stands in “rough proportionality” to the proposed development project’s impacts. *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994). But at no point do courts consider the bureaucratic application process or formal acceptance of the permit.

The Fifth Amendment inquiry remains focused on the government-imposed conditions themselves, even when the claimant had no opportunity to accept the government’s conditions because the permit was never issued. *Koontz*, 570 U.S. at 606 (holding *Nollan/Dolan* principles “do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so.”). The unconstitutional-conditions injury is complete when the coercive condition is imposed—“regardless of whether the government ultimately succeeds in pressuring someone into forfeiting” the right. *Id.*

Just in the last two years the Court has recognized the principle at issue in this case, and found in favor of Falconers’ position. In *Mahmoud v. Taylor*, 606 U.S. 522 (2025), no signed form or permission slip was involved. The unconstitutional condition arose from a school board’s curricular decisions alone. *Mahmoud*, 606 U.S. at 532–33. The Court specified a now familiar rule: “[W]hen the government chooses to provide public benefits, it may not condition the availability of those benefits upon a recipient’s willingness to surrender his religiously impelled status.” *Id.* at 561 (cleaned up). Likewise, in *Mirabelli v.*

Bonta, 607 U.S. 492 (2026) (per curiam), the unconstitutional policies appeared in state guidance documents and training curriculum, not in any form parents were required to sign.

Here, the district court held that deleting a recital of CDFW's warrantless search power from the certification extinguished Falconers' injuries. ER-5–6. But that conclusion misapprehends the doctrine on which Falconers' claims rest. *See Stavrianoudakis*, 108 F.4th at 1138–41. CDFW deleted language from the certification, but it did not touch the operative regulation. 14 CCR § 670(j)(3)(A) *still* conditions licensure on submission to warrantless searches of homes and property, backed by an express penalty for refusal: “The department may deny the issuance of, or immediately suspend, the license of a licensee who refuses to be available to participate in a facility inspection or who refuses to allow inspection of a facility, license, book, or other record ...” 14 CCR § 670(j)(3)(A).

This is the coercive condition in its purest form: assert your Fourth Amendment right to refuse a warrantless search of your home and property and lose your license. The district court itself acknowledged § 670(j)(3)(A) survives CDFW's attempt to moot this litigation,

characterizing the regulation as “discretionary permission for the government to conduct unannounced warrantless searches at some unspecified time in the future.” ER-6. But the district court’s description answers the wrong question. When you renew your license, you become subject to 14 CCR § 670(j)(3)(A). And if you are subject to 14 CCR § 670(j)(3)(A), then you have no ability to refuse a warrantless search of your home and property without losing your license.

This condition operates by force of law on every licensed falconer in California and at every renewal, whether any certification form recites it. *See Farley Terminal Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 522 F.2d 1095, 1098 n.2 (9th Cir. 1975) (per curiam) (quoting *Armour Packing Co. v. United States*, 209 U.S. 56, 66 (1908)) (a regulation in force “is read into the [instrument] and becomes a part of it.”); *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947) (duly promulgated regulations are “binding on all who sought to come within” the regulated activity, “regardless of actual knowledge.”). Falconers do not challenge the potential announced warrantless searches of homes and property; they challenge the conditioning of the license on *advance submission* to those searches on pain of suspension.

B. This Court already recognized Falconers’ on-going unconstitutional conditions injuries in 2024.

As noted, this Court has already identified Falconers’ injury as a forced choice, not a piece of paper. *Stavrianoudakis*, 108 F.4th at 1140–41. Falconers face a choice between “retention of their Fourth Amendment rights or receipt of a falconry license,” and “suffer this injury every time they renew their licenses.” *Id.* That forced choice is imposed by 14 CCR § 670(j)(3)(A), and it recurs at every license renewal. Removing language from the certification form does not remove the choice.

Falconers’ injuries are not some future hypothetical warrantless search; they are the conditioning of licensure on prospective compelled “consent” to it. The alleged injury from the suspension-for-refusal penalty—a coerced choice imposed at licensure and renewal—does not require any search to have occurred. And this Court has already held that such a coerced choice is a cognizable, recurring injury. *Id.* at 1140–41. The penalty clause is not discretionary permission to inspect later; it is a present, operative rule that strips a licensee of his or her license the moment they assert the Fourth Amendment right to refuse. That is a condition that binds now—not a hypothetical future injury. CDFW’s

changes to the certification merely removed the recital of the same condition the regulation has always included: § 670(j)(3)(A) remains the source of the alleged injuries.

CDFW may urge affirmance on the district court's mistaken reasoning that the edited certification no longer textually incorporates § 670(j), and therefore Falconers suffer no unconstitutional condition. But that argument is beside the point under Falconers' theory. Falconers do not contend the certification incorporates the condition, nor that it *needs to* incorporate the condition in order to establish their injuries. Instead, Falconers contend 14 CCR § 670(j)(3)(A) imposes the condition by force of law, independent of any incorporating language. *Farley*, 522 F.2d at 1098. An applicable regulation with the force of law governs the licensed activity regardless of whether the license document “incorporates” it. *Merrill*, 332 U.S. at 385.

A government agency may not evade constitutional scrutiny simply by categorizing its demands as “conditions precedent to permit approval.” *Koontz*, 570 U.S. at 606. But this is precisely what CDFW attempts here—submission to 14 CCR § 670(j)(3)(A) as a condition precedent to obtaining a license. *Id.* The presence or absence of signed

forms does not move the needle of constitutional analysis in this context.

Some federal courts of appeals have even held that written acceptance of an unconstitutional condition is not only unnecessary, but legally inoperative. *Anobile v. Pelligrino*, 303 F.3d 107, 124–25 (2d Cir. 2002) (refusing “to construe plaintiffs’ yearly license application as effective consent” to otherwise unconstitutional searches); *Serpas v. Schmidt*, 827 F.2d 23, 29–30 (7th Cir. 1987) (licensees’ written consent “was vitiated by the fact that it was premised on the existence of the otherwise unauthorized and unconstitutional regulations.”).

So too here. The signature line on the annual falconry license certification is evidence of the condition; it is not the condition itself. California’s license certification was never doing the unconstitutional work the district court assigned to it. That work is done by 14 CCR § 670(j)(3)(A). A CDFW falconry license is a privilege granted subject to the CDFW’s regulatory regime, and the regulations in force are read into it by operation of law. The condition binds every licensee whether the application recites it.

The choice this Court held cognizable in 2024 is therefore imposed today exactly as it was then—CDFW merely stopped documenting it on the certification forms. Falconers hold CDFW falconry licenses, must renew them annually, and are subject to 14 CCR § 670(j)(3)(A)’s penalty: refuse prior “consent” to unannounced warrantless searches of your home and property or forfeit the license.

II. Falconers’ claims are live because the challenged power causing the injury never ceased being exercised.

Because Falconers’ constitutional injuries persist, their case cannot be moot. The district court’s voluntary-cessation and mootness analysis in its order rests on a false premise: that CDFW stopped exercising the challenged power causing Falconers’ injuries. It did not. Real and immediate threats of future injury to Falconers’ rights exist. *See Lyons v. City of Los Angeles*, 615 F.2d 1243, 1246–48 (9th Cir. 1980) (holding that the equitable claims were not moot because of the possibility of recurrence and it was “capable of repetition yet evading review”).

The challenged authority continues to condition falconry licenses on submission to unannounced warrantless searches of homes and property. ER-25–34. CDFW deleted language from the license certification in an attempt to moot this litigation, but deliberately

preserved the search authority and the suspension-for-refusal penalty in 14 CCR § 670(j)(3)(A) that is the actual source of Falconers' injuries. ER-4 (citing ER-51–66). The operative power CDFW exercises from 14 CCR § 670(j)(3)(A) remains as it was before they changed the certification form. A constitutional claim cannot be mooted by ending a documentary description of challenged power that continues in full force. Because § 670(j)(3)(A)'s penalty clause remains enforceable, the challenged condition is being enforced now, and the claims are live, and the mootness inquiry should have ended there.

But even if this Court reaches the issue of voluntary cessation, which is unnecessary given that CDFW retains and continues to exercise the challenged power, the Court need not grant CDFW credit where none is due. The district court invoked a presumption of governmental good faith and declined to take a “cynical view” of the government's motive. ER-6–8. And while it is true that under *Board of Trustees of the Glazing Health and Welfare Trust v. Chambers* legislative or rulemaking processes are entitled to solicitude when those processes repeal the challenged conduct, on de novo review no solicitude is required. 941 F.3d 1195, 1199 (9th Cir. 2019) (en banc).

CDFW's own rulemaking record establishes that the deletion on the license certification form was in response to this litigation and left 14 CCR § 670(j)(3)(A) untouched. ER-4 (citing ER-51–66); *supra* n.2–3.

Under the voluntary-cessation exception to mootness, CDFW “cannot automatically moot a case simply by ending its unlawful conduct once sued.” *Already*, 568 U.S. at 91.

The Committee Staff Summary for January 15, 2025, states the falconry changes were proposed in response to litigation and to delete a provision “disfavored by the 9th Circuit.” *Supra* at n.2. And the Policy Statement Overview for the proposed change states the purpose was to “conform” the regulations and applications to this Court's 2024 opinion “concerning the ‘Certification.’” *Supra* at n.3. An agency that changes a certification to conform to an adverse opinion—while preserving the very authority under challenge—has not demonstrated that “the challenged conduct cannot reasonably be expected to recur.” *Already*, 568 U.S. at 95. Processes like CDFW's that modified paperwork but kept the challenged power on the books earn no solicitude.

III. Falconers’ claims are live because the license must be renewed each year, thereby triggering the “capable of repetition, yet evading review” doctrine.

Requests for equitable relief remain live, despite subsequent events, where the challenged action is “capable of repetition, yet evading review.” *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). This mootness doctrine applies where two elements are present: “(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *Id.* The district court erred in setting aside this independent mootness exception for claims “capable of repetition, yet evading review.” ER-6–8.

The “capable of repetition” exception applies to Falconers’ claims regardless of what the district court determined regarding voluntary cessation. Under this doctrine, for a controversy to be “too short,” it must be of “inherently limited duration.” *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 836 (9th Cir. 2014) (quotation omitted). The exception is “concerned not with particular lawsuits, but with classes of

cases where, absent an exception, they would *always* evade judicial review.” *Id.* (emphasis in original).

Here, the challenged action is too short in duration to be fully litigated before it expires because the falconry license operates on an annual renewal cycle, and the coerced choice is imposed anew each year. *Stavrianoudakis*, 108 F.4th at 1138 (the injury recurs “every time they renew their licenses.”). The exception is properly framed around the recurring renewal-and-certification cycle as a category that will *always* be too short for full review. Further, there is a reasonable expectation the same complaining parties will be subject to the same forced choice again—Falconers must renew annually and remain subject to 14 CCR § 670(j)(3)(A). As a result, Falconers’ claims fall squarely within the exception.

IV. Falconers’ claims are live because effective equitable relief remains available to end their injuries.

The district court held no further relief was available to Falconers because this Court previously found they have no standing to enjoin directly 14 CCR § 670(j)(3)(A)’s unannounced warrantless search provision. ER-8. But that determination conflates this Court’s 2024 holding on standing to challenge warrantless searches with the relief

available on the Falconers' current unconstitutional-conditions claim. A live controversy exists so long as effective relief remains possible, and here it plainly does. *Laidlaw*, 528 U.S. at 189. Falconers seek two forms of relief, each redressing the coerced choice: declaratory judgment and injunctive relief.

With respect to declaratory judgment, Falconers seek a declaration that conditioning the issuance or retention of a falconry license on submission to warrantless searches—via 14 CCR § 670(j)(3)(A)'s suspend-for-refusal penalty—violates the unconstitutional-conditions doctrine. A declaratory judgment redresses an unconstitutional-conditions injury by removing the coercive force of the condition, and a plaintiff need not first surrender the right and suffer suspension to obtain it. *Koontz*, 570 U.S. at 606.

As for injunctive relief, Falconers seek an injunction against enforcement of the suspension-for-refusal penalty as applied to a licensee who declines warrantless searches of their home and property. This does not require enjoining potential future searches (the relief this Court found unavailable in 2024); it enjoins the suspension for refusal penalty, which is the operative source of the coercion.

Conclusion

The unconstitutional-conditions injury this Court recognized in 2024 survives CDFW's modification of the falconry license certification form, because the coercive condition—submit to warrantless searches of your home and property or lose your license—remains in force under 14 CCR § 670(j)(3)(A). The challenged authority never ceased; the case is not moot; and both declaratory and injunctive relief remain available to redress the forced choice. The order of dismissal should be reversed and the case remanded.

Respectfully submitted,

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Certificate of Compliance

I am one of the attorneys of record in this case. This brief complies with the length limits permitted by Ninth Circuit Rule 32-1; it contains 5020 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

September 16, 2026

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Certificate of Service

I hereby certify that on September 16, 2026, I electronically filed the foregoing Opening Brief of Appellants with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

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